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EXAMINER

HYLTON, ROBIN A.

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 12/03/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/042,841

Applicant(s)

HWANG, PHILIP C.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. The indicated allowability of claims 6,7,9,11, and 18-26 is withdrawn in view of the newly discovered references to Daoud, Meade, Huget, and Demurger. Rejections based on the newly cited references follow.

#### ***Terminal Disclaimer***

2. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c). It is noted that at the time of the filing of the terminal disclaimer, the associated power of attorney had not been received in the instant application.

#### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 1-7 and 9-27 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,036,049.

Although the conflicting claims are not identical, they are not patentably distinct from each other because each teaches a container having two lid portions hinged together for cooperative movement with respect to the container body and the lid portions being detachable from the container body. The patent claims teach the lid portions detach from the container body at an angle less than 180°. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a range of angles for detachment of the lid portions from the container body (i.e., provide more broad terms).

#### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the pivot member is sized to receive the at least one engaging member "without requiring deflection of the at least one engaging member" in claim 1 and "the at least one engaging member is able to move freely past the pivot member" to allow the lid to become detachable from the pivot member in claim 27.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 18 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Huget (US 2,963,734).

See description beginning at column 2, line 58.

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***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1,2,5,10,12, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daoud (US 5,669,106).

Daoud teaches the claimed container except is silent regarding the shape of the container being rectangular.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container of a rectangular shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the pivot pin and engaging members to the container and lid, respectively, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

10. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Meade (US 906,644).

Daoud as modified teaches the claimed container except is silent regarding first and second lid panels operatively connected along intermediate edges.

Meade teaches it is known to provide a lid with operatively connected first and second panels, the panels joined along intermediate edges at hinge 17, i.e., between the extreme edges.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of operatively connected first and second panels, the panels joined

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along intermediate edges, to the modified lid of Daoud. Doing so allows for partially opening the lid for removal of contents without the necessity of opening the entire lid.

11. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Demurger (US 4,989,747).

Daoud as modified teaches the claimed container except is silent regarding a latch on the lid and a shoulder on the container wall.

Demurger teaches it is known to provide a latch on the lid and a shoulder on the container wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a latch on the lid and a shoulder on the container wall. Doing so maintains the container in a closed configuration until it is desired to remove articles stored therein.

Regarding claims 15 and 16, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the latch with an inwardly and upwardly angled portion and the cooperating shoulder with a downwardly and outwardly portion since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

12. Claims 6,7,9,11, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daoud.

Daoud teaches the claimed container except is silent regarding the shape of the container being rectangular and the pivot pins on the container and the engaging members on the lid.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container of a rectangular shape since such a modification

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would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the pivot pin and engaging members to the container and lid, respectively, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

13. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 18 above, and further in view of Meade.

Daoud as modified teaches the claimed container except is silent regarding first and second lid panels operatively connected along intermediate edges.

Meade teaches it is known to provide a lid with operatively connected first and second panels, the panels joined along intermediate edges at hinge 17, i.e., between the extreme edges.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of operatively connected first and second panels, the panels joined along intermediate edges, to the modified lid of Daoud. Doing so allows for partially opening the lid for removal of contents without the necessity of opening the entire lid.

14. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 18 above, and further in view of Demurger.

Daoud as modified teaches the claimed container except is silent regarding a latch on the lid and a shoulder on the container wall.

Demurger teaches it is known to provide a latch on the lid and a shoulder on the container wall.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a latch on the lid and a shoulder on the container wall. Doing so maintains the container in a closed configuration until it is desired to remove articles stored therein.

15. Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daoud in view of Meade and Demurger.

Daoud teaches the claimed container except is silent regarding the shape of the container being rectangular, first and second lid panels operatively connected along intermediate edges, and a latch on the lid and a shoulder on the container wall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container of a rectangular shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Meade teaches it is known to provide a lid with operatively connected first and second panels, the panels joined along intermediate edges at hinge 17, i.e., between the extreme edges.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of operatively connected first and second panels, the panels joined along intermediate edges, to the modified lid of Daoud. Doing so allows for partially opening the lid for removal of contents without the necessity of opening the entire lid.

Demurger teaches it is known to provide a latch on the lid and a shoulder on the container wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a latch on the lid and a shoulder on the container wall of the



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modified container of Daoud. Doing so maintains the container in a closed configuration until it is desired to remove articles stored therein.

16. Claims 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Webb (US 4,685,567).

Webb teaches the claimed container except for a plurality of pivot pins.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of pivot pins, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various containers and hinges having features similar to that disclosed and/or claimed are cited for their disclosures.

18. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

19. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

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I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_


20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
November 30, 2003

  
Robin A. Hylton  
Primary Examiner  
GAU 3727